

HOUSE BILL No. 1099

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-42-14.5.

Synopsis: Genetically engineered food. Provides that, beginning July 1, 2017, any food that is offered for retail sale is misbranded, for purposes of the law prohibiting the misbranding of food, if the food was or may have been entirely or partially produced with genetic engineering and this is not disclosed in a certain manner. Provides that, beginning July 1, 2017, there may be no statement or implication on a label, on a sign in the retail establishment, or in any advertising or promotional materials that a food is "natural", "naturally made", "naturally grown", or "all natural" if the food is genetically engineered or a processed food. Exempts certain foods from these provisions. Requires the state department of health to administer and enforce these provisions. Makes the violation of a prohibition a Class A infraction. Authorizes the state department of health or any person to bring a civil action to enjoin a violation.

Effective: July 1, 2016.

Kersey

January 5, 2016, read first time and referred to Committee on Agriculture and Rural Development.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1099

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-18-2-137, AS AMENDED BY P.L.144-2015,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 137. (a) "Food establishment", for purposes of
4 IC 16-42-5 ~~and~~ IC 16-42-5.2, **and IC 16-42-14.5**, means any building,
5 room, basement, vehicle of transportation, cellar, or open or enclosed
6 area occupied or used for handling food.
7 (b) The term does not include the following:
8 (1) A dwelling where food is prepared on the premises by the
9 occupants, free of charge, for their consumption or for
10 consumption by their guests.
11 (2) A gathering of individuals at a venue of an organization that
12 is organized for educational purposes in a nonpublic educational
13 setting or for religious purposes, if:
14 (A) the individuals separately or jointly provide or prepare,
15 free of charge, and consume their own food or that of others
16 attending the gathering; and
17 (B) the gathering is for a purpose of the organization.



Gatherings for the purpose of the organization include funerals, wedding receptions, christenings, bar or bat mitzvahs, baptisms, communions, and other events or celebrations sponsored by the organization.

(3) A vehicle used to transport food solely for distribution to the needy, either free of charge or for a nominal donation.

(4) A private gathering of individuals who separately or jointly provide or prepare and consume their own food or that of others attending the gathering, regardless of whether the gathering is held on public or private property.

(5) Except for food prepared by a for-profit entity, a venue of the sale of food prepared for an organization:

(A) that is organized for:

(i) religious purposes; or

(ii) educational purposes in a nonpublic educational setting;

(B) that is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) that offers the food for sale to the final consumer at an event held for the benefit of the organization;

unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.

(6) Except for food prepared by a for-profit entity, an Indiana nonprofit organization that:

(A) is organized for civic, fraternal, veterans, or charitable purposes;

(B) is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) offers food for sale to the final consumer at an event held for the benefit of the organization;

if the events conducted by the organization take place for not more than fifteen (15) days in a calendar year.

(7) An individual vendor of a farmer's market or roadside stand if the individual meets the requirements of IC 16-42-5-29.

(8) The holder of a farm winery permit under IC 7.1-3-12-5 or a brewer's permit under IC 7.1-3-2-7(5) if the requirements of IC 16-42-5-30 are met.

SECTION 2. IC 16-18-2-147.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 147.8. "Genetically engineered", for purposes of IC 16-42-14.5, has the meaning set forth in IC 16-42-14.5-2.**

SECTION 3. IC 16-18-2-293.7 IS ADDED TO THE INDIANA



CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2016]: **Sec. 293.7. "Processed food", for purposes of IC 16-42-14.5, has the meaning set forth in IC 16-42-14.5-3.**

SECTION 4. IC 16-18-2-293.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 293.8. "Processing aid", for purposes of IC 16-42-14.5, has the meaning set forth in IC 16-42-14.5-4.**

SECTION 5. IC 16-42-14.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

Chapter 14.5. Food: Genetically Engineered Food

Sec. 1. This chapter may not be construed as requiring:

- (1) the listing or identification on a label of any ingredient that is genetically engineered; or
- (2) that the term "genetically engineered" be placed immediately preceding the common name or primary product descriptor of a food.

Sec. 2. As used in this chapter, "genetically engineered" refers to a food that is produced from an organism or organisms in which the genetic material has been changed through the application of:

- (1) in vitro nucleic acid techniques, including:
 - (A) recombinant deoxyribonucleic acid (DNA) techniques; and
 - (B) the direct injection of nucleic acid into cells or organelles; or
- (2) the fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic family, in a way that does not occur by natural multiplication or natural recombination.

Sec. 3. As used in this chapter, "processed food" means a food other than a raw agricultural commodity. The term includes any food produced from a raw agricultural commodity that has been subject to processing, including:

- (1) canning;
- (2) smoking;
- (3) pressing;
- (4) cooking;
- (5) freezing;



- (6) dehydration;
- (7) fermentation; or
- (8) milling.

Sec. 4. As used in this chapter, "processing aid" means:

- (1) a substance that is added to a food during the processing of the food but is removed in some manner from the food before the food is packaged in its finished form;
- (2) a substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; or
- (3) a substance that is added to a food for its technical or functional effect in the processing but is present in the finished food at insignificant levels and does not have any technical or functional effect in the finished food.

Sec. 5. Beginning July 1, 2017, any food that is offered for retail sale is misbranded for purposes of IC 16-42-1-16 if the food was or may have been entirely or partially produced with genetic engineering and this is not disclosed:

- (1) in the case of a raw agricultural commodity, on the package offered for retail sale, with the clear and conspicuous words "Genetically Engineered" on the front of the package of the commodity. However, if the raw agricultural commodity is not separately packaged or labeled, the clear and conspicuous words "Genetically Engineered" must appear on a label on the retail store shelf or bin in which the commodity is displayed for sale; or
- (2) in the case of a processed food, in clear and conspicuous language on the front or back of the package of the food, with the words "Partially Produced With Genetic Engineering" or "May Be Partially Produced With Genetic Engineering".

Sec. 6. Except for a food that is exempt under section 7 of this chapter, beginning July 1, 2017, there may be no statement or implication:

- (1) on the food label;
- (2) on an accompanying sign in the retail establishment; or
- (3) in any advertising or promotional materials;

that a food that is genetically engineered or a processed food is "natural", "naturally made", "naturally grown", or "all natural", or any other statement using similar words.

Sec. 7. The requirements of this chapter do not apply to any of the following:



(1) Food that consists entirely of, or is derived entirely from, an animal that has not been genetically engineered, regardless of whether the animal has been fed or injected with a genetically engineered food or a drug that has been produced through means of genetic engineering.

(2) A raw agricultural commodity or food derived from a raw agricultural commodity if the person who sells the raw agricultural commodity or food:

(A) knows that the raw agricultural commodity or food has been grown, raised, or produced without the use of genetically engineered seed or food; or

(B) receives, from the person who sold or supplies the raw agricultural commodity or food to that person, a sworn statement that the raw agricultural commodity or food:

(i) has not knowingly or intentionally been genetically engineered; and

(ii) has been segregated from and has not knowingly or intentionally been at any time commingled with food that may have been genetically engineered.

(3) A processed food that would otherwise be subject to this chapter solely because it includes one (1) or more genetically engineered processing aids or enzymes.

(4) An alcoholic beverage, as defined in IC 7.1-1-3-5.

(5) Until July 1, 2021, a processed food that would be subject to this chapter solely because it includes one (1) or more genetically engineered ingredients, if:

(A) a single genetically engineered ingredient does not account for more than one-half of one percent (0.5%) of the total weight of the processed food; and

(B) the processed food does not contain more than ten (10) genetically engineered ingredients.

(6) Food that the state department or an organization recognized by the state department has determined not to have been knowingly or intentionally produced from or commingled with genetically engineered seed or genetically engineered food, if the determination has been made using a sampling and testing procedure approved by the state department, subject to the following:

(A) The sampling procedure must provide that the sampling is done according to a statistically valid sampling plan consistent with principles recommended by an internationally recognized source, including the



International Standards Organization (ISO) and the Grain and Feed Trade Association (GAFTA).

(B) The testing procedure:

(i) must be consistent with the most recent "Guidelines on Performance Criteria and Validation of Methods for Detection, Identification and Quantification of Specific DNA Sequences and Specific Proteins in Foods", (CAC/GL 74 (2010)) published by the Codex Alimentarius Commission; and

(ii) must not rely on testing of processed foods in which no deoxyribonucleic acid (DNA) is detectable.

(7) Food that has been lawfully certified to be labeled, marketed, and offered for sale as "organic" under the federal Organic Food Production Act of 1990 (7 U.S.C. 6501 et seq.) and regulations adopted under the federal Organic Food Production Act of 1990, including a product that has been certified by a certifying agent (as defined by IC 15-15-8-2).

(8) Food that is not packaged for retail sale and that is:

(A) a processed food prepared and intended for immediate human consumption; or

(B) served, sold, or provided in a food establishment or other restaurant that is primarily engaged in the sale of food prepared and intended for immediate human consumption, including facilities described in IC 16-18-2-137(b).

(9) Medical food that is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

Sec. 8. (a) The state department shall administer and enforce this chapter.

(b) The state department may adopt rules under IC 4-22-2 necessary to implement and enforce this chapter. However, the rules may not create an exemption not specified in section 7 of this chapter.

Sec. 9. A person who violates this chapter commits a Class A infraction.

Sec. 10. (a) The state department or any person may, without proof of injury, bring a civil action to enjoin a violation of this chapter.

(b) The court may award court costs and reasonable attorney's fees to the prevailing party in an action brought under this section.

